IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 2 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SCIENTIFIC TIME INDUSTRIES

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

1. INCOME TAX REFERENCE No. 2 of 1991
NOTICE SERVED for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 09/05/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. The Income Tax Appellate, Ahmedabad Bench "A" has referred the following question of law for the opinion of this Court under Section 256(1) of the Income Tax Act, 1961 :

"Whether, the Appellate Tribunal is right in law and on facts in confirming imposition of penalty u/s 271(1)(c) of the assessee firm, relying on the decisions of Vinaychandra Harilal 128 ITR 752 and Chuharmal (1988) 172 ITR 250 which were cases of addition u/s 69-A ?"

2. The relevant assessment year was 1981-82. In the course of the assessment proceedings, the Income Tax Officer made additions because of certain unexplained cash credits amounting to Rs.1,42,500=00 in an order made under Section 144. Thereafter, by reason of an order made under Section 146, the Income Tax Officer made another order under Section 143(3) of the Act accepting the cash credits those amounting to Rs.58,600=00. The assessee did not file any appeal on these additions.

3. In the penalty proceedings, holding that the assessee had failed to offer any explanation in respect of the cash credits to the tune of Rs.58,600=00, the I.T.O., by his order dated 25-7-1984 made under Section 271(1)(c) of the Act, imposed a penalty of Rs.11,330=00 was made on the assessee, invoking the Explanation 1(A) to Section 271(1) of the Act. The Commissioner (Appeals) confirmed the order of the Income Tax Officer on the ground that the identity and capacity of the creditors and the genuineness of the deposits were not established, and that there was a clear finding in the assessment order that the assessee had introduced fictitious credits in the books of account. In the appeal before the Tribunal, it was held that the assessee had failed to give any explanation regarding the four credits amounting to Rs.58,600=00 and therefore, the amount of Rs.58,600=00 purported to be deposits and deemed to be income could be made as a basis for imposing the penalty.

4. During the course of the assessment proceedings, the assessee was given an opportunity to explain the source of four credits mentioned in the penalty order. He was asked to prove these credits. However, no satisfactory explanation was given in respect of any of these credits and it was held that the credits amounting to Rs.58,600=00 in the account of the four persons were not proved and the amount was added as income under

Section 68 of the Act, ordering initiation of the penalty proceedings under Section 271(1)(c) thereof. In the penalty proceedings, it was contended by the assessee that the depositors were not cooperating and therefore, he could not prove the cash credits in various accounts.

5. Explanation 1(A) to Section 271(1), inter alia, provided that, where in respect of any facts material to the computation of the total income of any person under the Act, such person fails to offer an explanation, then, the amount added in computing the total income of such person as a result thereof shall, for the purpose of clause (c) of sub-section (1) of section 271, be deemed to represent the income in respect of which the particulars have been concealed. Under Section 68, it is laid down that, where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and the source thereof or the explanation offered by him is not, in the opinion of the Income Tax Officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year. The amount of Rs.58,600=00 was charged to income tax under the said provision by the Income Tax Officer while passing the order of assessment, which became the basis of imposition of penalty. Under Section 271(1)(c) of the Act, if the I.T.O. or the Appellate Assistant Commissioner or Commissioner (Appeals), in course of any proceedings under the Act, is satisfied that any person has concealed the particulars of his income or furnished inaccurate particulars of such income, he will direct that such person shall pay penalty as contemplated under sub-clause (iii) of clause (c) of section 271(1) of the Act. Therefore, since the assessee offered no explanation in respect of the four cash credit entries, the presumption arose under Explanation 1(A) that the said amount of Rs.58,600=00, which was added, was income in respect of which particulars were concealed within the meaning of clause (c) of section 271(1) of the Act.

6. In the above view of the matter, the Tribunal was right in law and on the facts of the case in confirming the imposition of penalty on the assessee under Section 271(1)(c) of the Act. The question referred by the Tribunal is accordingly answered in the affirmative in favour of the revenue and against the assessee. The reference stands disposed of accordingly with no order as to costs.

[R.K.ABICHANDANI, J.]

[K.M.MEHTA, J.]

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